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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

INNA VIGDORCHIK, on behalf of herself )  
 and all others similarly situated, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CENTURY THEATRES, INC. and )  
 CINEMARK USA, INC., )  
 )  
 Defendants. )

Case No. C 07-00736 MMC  
 Honorable Maxine M. Chesney  
**STIPULATED PROTECTIVE ORDER**

1 The parties to this action, having determined that certain documents and information  
2 produced or to be produced during discovery in this litigation should be kept confidential in order  
3 to protect the legitimate business and privacy interests of the parties, their customers and other  
4 persons, including non-parties to this action, and based upon the stipulation of the parties, and good  
5 cause for entering this Stipulated Protective Order (the "Order") having been shown;

6 It is hereby stipulated and agreed by the parties and ordered by the Court that the following  
7 procedures shall govern the production and use of all documents, testimony, interrogatory answers  
8 and other information produced during discovery in this action:

9 1. PURPOSES AND LIMITATIONS

10 Disclosure and discovery activity in this action are likely to involve production of  
11 confidential, proprietary, or private information for which special protection from public disclosure  
12 and from use for any purpose other than prosecuting this litigation would be warranted.  
13 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
14 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
15 all disclosures or responses to discovery and that the protection it affords extends only to the limited  
16 information or items that are entitled under the applicable legal principles to treatment as  
17 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated  
18 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule  
19 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied  
20 when a party seeks permission from the court to file material under seal.

21 2. DEFINITIONS

22 2.1 *Party*: any party to this action, including all of its officers, directors,  
23 employees, consultants, retained experts, and outside counsel (and their support staff).

24 2.2 *Disclosure or Discovery Material*: all items or information, regardless of the  
25 medium or manner generated, stored, or maintained (including among other things, testimony,  
26 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
27 discovery in this matter.  
28

1                   2.3     “*Confidential*” *Information or Items*: “Confidential Information” means any  
2 sensitive confidential research, design, development, financial, commercial or personal information  
3 contained in any document or testimony (regardless of how generated, stored or maintained) within  
4 the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure. “Confidential Information”  
5 does not include any information that a party has made publicly available.

6                   2.4     “*Highly Confidential - Attorneys’ Eyes Only*” *Information or Items*: “Highly  
7 Confidential Information” shall include any trade secret or any confidential research, design,  
8 development, commercial or personal information contained in any document or testimony within  
9 the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure that is entitled to a higher level  
10 of protection due to its commercial sensitivity. Disclosure to another Party or non-party would  
11 create a substantial risk of serious injury that could not be avoided by less restrictive means. All  
12 protections applicable under this Order to Confidential Information apply as well to Highly  
13 Confidential Information.  
14

15                   2.5     *Receiving Party*: a Party that receives Disclosure or Discovery Material from  
16 a Producing Party.  
17

18                   2.6     *Producing Party*: a Party or non-party that produces Disclosure or Discovery  
19 Material in this action.  
20

21                   2.7     *Designating Party*: a Party or non-party that designates information or items  
22 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

24                   2.8     *Protected Material*: any Disclosure or Discovery Material that is designated  
25 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”  
26

27                   2.9     *Outside Counsel*: attorneys who are not employees of a Party but who are  
28 retained to represent or advise a Party in this action.

1                   2.10   *House Counsel*: attorneys who are employees of a Party.

2                   2.11   *Counsel (without qualifier)*: Outside Counsel and House Counsel (as well as  
3 their support staffs).  
4

5                   2.12   *Expert*: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
7 witness or as a consultant in this action and who is not a past or a current employee of a Party or of  
8 a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee  
9 of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant  
10 retained in connection with this litigation.  
11

12                  2.13   *Professional Vendors*: persons or entities that provide litigation support  
13 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;  
14 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
15 subcontractors.  
16

17                  3.     SCOPE

18                  The protections conferred by this Order cover not only Protected Material (as defined above),  
19 but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries,  
20 or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or  
21 in court or in other settings that might reveal Protected Material.  
22

23                  4.     DURATION

24                  Even after the termination of this litigation, the confidentiality obligations imposed by this  
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
26 otherwise directs.  
27  
28

1           5.     DESIGNATING PROTECTED MATERIAL

2                 5.1     *Exercise of Restraint and Care in Designating Material for Protection.* Each  
3 Party or non-party that designates information or items for protection under this Order must take  
4 care to limit any such designation to specific material that qualifies under the appropriate standards.  
5 A Designating Party must take care to designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify - so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not swept  
8 unjustifiably within the ambit of this Order.  
9

10                 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
11 are shown to be clearly unjustified, or that have been made for an improper purpose (*e.g.*, to  
12 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses  
13 and burdens on other parties), expose the Designating Party to sanctions.  
14

15                 If it comes to a Party's or a non-party's attention that information or items that it  
16 designated for protection do not qualify for protection at all, or do not qualify for the level of  
17 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
18 withdrawing the mistaken designation.  
19

20                 5.2     *Manner and Timing of Designations.* Except as otherwise provided in this  
21 Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
22 material that qualifies for protection under this Order must be clearly so designated before the  
23 material is disclosed or produced.  
24

25                 Designation in conformity with this Order requires:

26                         (a)     for information in documentary form (apart from transcripts of  
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
28

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” at the top of  
2 each page that contains protected material. If only a portion or portions of the material on a page  
3 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
4 by making appropriate markings in the margins) and must specify, for each portion, the level of  
5 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -  
6 ATTORNEYS’ EYES ONLY”).  
7

8 A Party or non-party that makes original documents or materials available for  
9 inspection need not designate them for protection until after the inspecting Party has indicated which  
10 material it would like copied and produced. During the inspection and before the designation, all  
11 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL -  
12 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
13 copied and produced, the Producing Party must determine which documents, or portions thereof,  
14 qualify for protection under this Order, then, before producing the specified documents, the  
15 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected  
17 Material. If only a portion or portions of the material on a page qualifies for protection, the  
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
19 markings in the margins) and must specify, for each portion, the level of protection being asserted  
20 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).  
21  
22  
23

24 (b) for testimony given in deposition or in other pretrial or trial  
25 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,  
26 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further  
27 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’  
28

1 EYES ONLY.” When it is impractical to identify separately each portion of the testimony that is  
2 entitled to protection, and when it appears that substantial portions of the testimony may qualify for  
3 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
4 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify  
5 the specific portions of the testimony as to which protection is sought and to specify the level of  
6 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’  
7 EYES ONLY”). Only those portions of the testimony that are appropriately designated for  
8 protection within the 20 days shall be covered by the provisions of this Order.  
9  
10

11 Transcript pages containing Protected Material must be separately bound by  
12 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
13 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
14 non-party offering or sponsoring the witness or presenting the testimony.  
15

16 (c) for any information produced in some form other than documentary,  
17 and for any other tangible items, that the Producing Party affix in a prominent place on the exterior  
18 of the container or containers in which the information or item is stored the legend  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only  
20 portions of the information or item warrant protection, the Producing Party, to the extent practicable,  
21 shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as  
22 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”  
23

24 5.3 *Inadvertent Failures to Designate.* If timely corrected, an inadvertent failure  
25 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
26 - ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to  
27 secure protection under this Order for such material. If material is appropriately designated as  
28

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” after the  
2 material was initially produced, the Receiving Party, on timely notification of the designation, must  
3 make reasonable efforts to assure that the material is treated in accordance with the provisions of  
4 this Order.  
5

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 *Timing of Challenges.* Unless a prompt challenge to a Designating Party’s  
8 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
9 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
10 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
11 after the original designation is disclosed.  
12

13 6.2 *Meet and Confer.* A Party that elects to initiate a challenge to a Designating  
14 Party’s confidentiality designation must do so in good faith and must begin the process by conferring  
15 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
16 for the Designating Party. In conferring, the challenging party must explain the basis for its belief  
17 that the confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
19 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
20 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
21 process first.  
22

23 6.3 *Judicial Intervention.* A party that elects to press a challenge to a  
24 confidentiality designation after considering the justification offered by the Designating Party may  
25 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
26 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.  
27  
28



1 Each such motion must be accompanied by a competent declaration that affirms that the movant has  
2 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
3 forth with specificity the justification for the confidentiality designation that was given by the  
4 Designating Party in the meet and confer dialogue.  
5

6 It is understood and agreed that the Designating Party will have the burden of  
7 establishing the grounds for confidential treatment for the document or testimony at issue. The  
8 confidential status of the documents, testimony, or information at issue shall be maintained pending  
9 the Court's ruling on the motion and any appeal therefrom.  
10

11 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
13 material in question the level of protection to which it is entitled under the Producing Party's  
14 designation.  
15

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 *Basic Principles.* A Receiving Party may use Protected Material that is  
18 disclosed or produced by another Party or by a non-party in connection with this case only for  
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
20 disclosed only to the categories of persons and under the conditions described in the Order. When  
21 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,  
22 below (FINAL DISPOSITION).  
23

24 7.2 *Disclosure of "CONFIDENTIAL" Information or Items.* Unless otherwise  
25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
26 disclose any information or item designated CONFIDENTIAL only to:  
27

- 28 (a) the Receiving Party's Outside Counsel of record in this action, as well

1 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
2 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
3 hereto as Exhibit A;

4  
5 (b) the officers, directors, and employees (including House Counsel) of  
6 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
7 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

8 (c) experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
10 Bound by Protective Order" (Exhibit A);

11  
12 (d) the Court and its personnel;

13 (e) court reporters, their staffs, and professional vendors to whom  
14 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
15 Bound by Protective Order" (Exhibit A);

16  
17 (f) prior to and during their depositions, witnesses in the action to whom  
18 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective  
19 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
20 Protected Material must be separately bound by the court reporter and may not be disclosed to  
21 anyone except as permitted under this Stipulated Protective Order;

22  
23 It shall be the further obligation of counsel, upon learning of any breach or  
24 threatened breach of this Order by any witness provided designated documents, promptly to notify  
25 opposing counsel of such breach or threatened breach;

26 (g) the author of the document or the original source of the information.  
27  
28

1                   7.3     Disclosure of “*HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY*”

2     *Information or Items.* Unless otherwise ordered by the court or permitted in writing by the  
3     Designating Party, a Receiving Party may disclose any information or item designated “*HIGHLY*  
4     *CONFIDENTIAL - ATTORNEYS’ EYES ONLY*” only to:

5  
6                   (a)     the Receiving Party’s Outside Counsel of record in this action, as well  
7     as employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
8     litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached  
9     hereto as Exhibit A;

10  
11                  (b)     as deemed appropriate in case-specific circumstances: House Counsel  
12     of a Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom  
13     disclosure is reasonably necessary for this litigation, and (3) who has signed the “Agreement to Be  
14     Bound by Protective Order” (Exhibit A);

15  
16                  (c)     experts (as defined in this Order) (1) to whom disclosure is reasonably  
17     necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”  
18     (Exhibit A);

19                  (d)     the Court and its personnel;

20                  (e)     court reporters, their staffs, and professional vendors to whom  
21     disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
22     Bound by Protective Order” (Exhibit A); and  
23

24                  (f)     the author of the document or the original source of the information.

25     ///

26  
27  
28     ///

1           8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2                 OTHER LITIGATION

3           1.     If a Receiving Party is served with a subpoena or an order issued in other  
4 litigation that would compel disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the  
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
7 and in no event more than three court days after receiving the subpoena or order. Such notification  
8 must include a copy of the subpoena or court order.  
9

10          2.     The Receiving Party also must immediately inform in writing the Party who  
11 caused the subpoena or order to issue in the other litigation that some or all the material covered by  
12 the subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a  
13 copy of this Order promptly to the Party in the other action that caused the subpoena or order to  
14 issue. The Receiving Party shall not produce any Confidential or Highly Confidential Information  
15 in response to the subpoena without either the prior written consent of the party or person that  
16 designated the documents or information as Confidential or Highly Confidential, or an order of a  
17 court of competent jurisdiction.  
18  
19

20          3.     The purpose of imposing these duties is to alert the interested parties to the  
21 existence of this Order and to afford the Designating Party in this case an opportunity to try to  
22 protect its confidentiality interests in the court from which the subpoena or order issued. The  
23 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
24 confidential material, including seeking a court order relieving the subpoenaed party or person of  
25 the obligations of the subpoena prior to the return date of such subpoena - and nothing in these  
26 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
27 disobey a lawful directive from another court.  
28

1           9.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 material to any person or in any circumstance not authorized under this Order, the Receiving Party  
4 must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
5 its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to  
6 whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person  
7 or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
8 Exhibit A.  
9

10           10.    FILING PROTECTED MATERIAL

11           Without written permission from the Designating Party or court order secured after  
12 appropriate notice to all interested persons, a Party may not file in the public record in this action  
13 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
14 with Civil Local Rule 79-5.  
15

16           11.    FINAL DISPOSITION

17           Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after  
18 the final termination of this action, each Receiving Party must return all Protected Material to the  
19 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
20 compilations, summaries or any other form of reproducing or capturing any of the Protected  
21 Material. With permission in writing from the Designating Party, the Receiving Party may destroy  
22 some or all of the Protected Material instead of returning it. Whether the Protected Material is  
23 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party  
24 (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that  
25 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed  
26  
27  
28

12.1 *Amendment of Order/Right to Further Relief.* The provisions of this Order may be modified only by order of the Court for good cause shown. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 *Nonwaiver of Objection to Discovery/Right to Assert Other Objections.* By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

Date: October 1, 2007


By: /s/  
Eric A. Grover

Date: October 1, 2007

By :                     /s/                      
Chad A. Stegeman

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2  
3 Date: October 1, 2007

4   
Honorable Maxine M. Chesney  
United States District Judge

## EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order ("Order") that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ in the case of *Vigdorchik v. Century Theatres, Inc., et al.*, Case No. C 07-00736 MMC. I agree to comply with and to be bound by all the terms of this Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_